

AT A REGULAR MEETING OF THE CULPEPER COUNTY BOARD OF SUPERVISORS HELD IN THE BOARD ROOM, LOCATED AT 302 N. MAIN STREET, ON TUESDAY, SEPTEMBER 1, 2009.

**Board Members Present:**

**William C. Chase, Jr., Chairman**

**Larry W. Aylor, Vice-Chairman**

Sue D. Hansohn

Steven E. Nixon

Tom S. Underwood

Steven L. Walker

Brad C. Rosenberger

**Staff Present:**

Frank T. Bossio, County Administrator

Roy B. Thorpe, Jr., County Attorney

John Egerton, Planning Director

Sam McLearen, Zoning Administrator

Donna Foster, Deputy Clerk

Barry Atchison, Assistant to the Deputy Clerk

**CALL TO ORDER**

Mr. Chase, Chairman, called the meeting to order at 7:00 p.m., and read the following statement into the record:

*All meetings and work sessions shall be conducted by all participants with observance of the fundamental rules of civility, including restraint in demeanor and respect for others and their views. Shouting, profanity, threats, personal attacks, and other similar actions are unacceptable. Should the Chairman determine that a participant is likely to or has violated the foregoing conduct guidelines, the Chairman may take appropriate action.*

**CITIZEN FORUM**

Mr. Chase opened the Citizen Forum and called for comments on any item that was not on the agenda.

George Bryson, Jefferson District. In April he had asked about having a portrait (Confederate General A.P. Hill) returned to the courthouse building. Five months have passed since his original request and he still has not received a response. He discussed the addition of a portico to the front of Woodland Church which was supported by columns from the old Russell Smith house, formerly located on the site of the current County Administration building. He read historical accounts of President Theodore Roosevelt resting on the porch during a visit to Culpeper as a guest of the late S. Russell Smith. He described how the porch was removed from the house when it was demolished in 1932, to make way for the Federal Post Office Building and its purchase by Mr. A.W. Hawkins and how it was subsequently relocated and rebuilt on to the front of Woodland Church. He further related Mr. Hawkins contribution was done as a memorial to his parents Mr. and Mrs. J.C. Hawkins who were

lifetime members of the Church's congregation. Mr. Bryson felt that it was important for the community to know that a portion of the S. Russell Smith house survives and is part of the front of the Woodland Church. He stated he was aware of interest in the community in having an historical sign placed in front of the County Administration building making note of the S. Russell Smith house and he felt the issue of the portico was an interesting fact to note as well.

Mr. Chase commented that he had sent a letter to the Judge because it was his decision on what to display in the courthouse. He said he had not received a response but would follow up either in person with the Judge or by letter.

Michael LaSalle, Salem District, Mr. LaSalle stated he was there in reference to the CSB purchase of the home on Conner drive that is being looked at for a group home. He was very concerned and disappointed with the total lack of communication and disregard for the community in the purchase of the home. He thought that the purchase by CSB should have been disclosed to the community and the Board of Supervisors should have been informed of it. He felt since this CSB is funded by tax money they should be required to communicate and openly inform the neighborhood that they are attempting to purchase the property. There was no formal communications with the Homeowners Association or any of the community and he and his neighbors found out in a roundabout way that he felt was inappropriate and did not give them time to address any of the concerns or issues they had in relation to the group home. He would have liked to have the opportunity to have addressed the Board of Supervisors before CSB went to closing. He expressed concern in the current economic situation that CSB has the type of funding that allows capital purchases without seeking some type of approval from the Board of Supervisors or some other entity besides their own Board of Directors. He thought since the County was facing budget cuts and the community is having difficulty funding schools and other projects, to him the CSB purchase seemed to be a very large capital project that was being purchased without any insight or regard for the Board of Supervisors or the community and he felt it was inappropriate. He felt that any other type of organization would have been required to disclose that type of information and expressed concern that CSB was acting as an independent, self-governing entity with no oversight. He advised that as a community he and his neighbors had safety concerns and they did not think the area was well suited for a group home because it is a small community and there is a lake less than 100 yards from the home. He explained there were concerns that if one of the individuals left the home unsupervised, they could end up in the lake and possibly drown. He felt the staff of the group home could not guarantee that one of the residents could not get free of supervision and gain access to the lake area and he thought that would be a liability for the homeowners association. He believed that traffic in the community was not suitable for a group home and there are no sidewalks or lighting and access to the town is difficult because of the distance he did not think it was the appropriate location for this type of home. He felt the homeowners association was forced at the last minute to seek legal counsel in order to address an issue that if the CSB had have openly communicated with them they could have established a dialogue and worked out some of the community's concerns. He also thought it would decrease property values in the area and found it disturbing that the neighborhood had to suffer from CSB's purchase. He requested the Board take immediate action to stop CSB's purchase and whatever other assistance can be provided until the community's concerns are met and things are corrected. He also requested an investigation into CSB's budget and purchasing procedures and where the funding for the extensive modifications that will be required for the home would come from. Until these issues are answered satisfactorily and it is determined they are using their funding appropriately he requested a freeze of CSB's future funding. Finally Mr. LaSalle stated he had tried to contact Mr. Duncan several times by phone, left voice mails and had contacted Mr. Duncan's staff and left messages but still has not

received a call back or any other response.

Lois Faye O'Meara, Salem District. Ms. O'Meara stated she objected to the CSB purchase of the residence on Conner Drive.

Don O'Meara, Salem District. Mr. O'Meara asserted his objection to the purchase as well. He stated his property backs up to the residence on Conner Drive he felt it was not the proper place for that type of facility.

Mark Henderson, Salem District. Mr. Henderson stated his main objection was that the proposed use of the property violated the neighborhood covenants that state single family dwellings only. He said that was one of the reasons he purchased his home and he felt that is also what future prospective buyers would expect.

Hope Henderson, Salem District. Ms. Henderson stated she also objected.

Sterling Smyth, Salem District. Mr. Smyth stated his objection to the CSB purchase and use as a group home of the residence on Connor Drive.

Tish Smyth, Salem District. Ms. Smyth thanked the Board for allowing her to speak on the topic. She stated she sales real estate in the area. She said that part of her duties as an agent was to present covenants to prospective buyers. She related that she bought in the neighborhood because she liked the covenants and the fact that it was a single family dwelling area. She recounted when they first bought in 1990 they encountered a problem with one neighbor that had to move a daughter in because of a divorce. That situation had raised questions among neighbors because it was two families residing in the same home but since it was their daughter and children an exception was made. She stated the CSB purchase results in a multiple family home that is automatically exempt by the state from the home owner's covenants. She described how current owners in the neighborhood do not like what is occurring and felt there are plenty of homes for sale in Culpeper that would be better suited. She acknowledged the price range was a demanding one but felt there are things that could be done such as purchasing a home with a smaller lot or buy a smaller house that requires fewer repairs than the Conner Drive residence. She restated her concern about CSB buying a house with covenants that all of the neighbors have to adhere to and exempting them right up front and as a result she objects to the purchase.

Bill Alphin, Salem District. Mr. Alphin stated he did not have a lot to say, but since he surrounds this subdivision on two and a half sides he is totally opposed to the purchase.

Elizabeth Fry, Salem District. Ms. Fry advised she was present as a chairperson for the Village of Griffinsburg as a homeowner and as a parent of a child with Down's syndrome. She asserted that the HOA had become aware of RRCSB's plan to purchase a foreclosed home in the neighborhood on the previous Friday and that a group home was being planned. She stated the neighborhood has had protective covenants in place since 1987 that state the lots are detached single family residences ad no such dwelling shall be occupied by more than one family. It also states that home occupation shall be permitted as long as such occupations are confined to the inside of each lot owners house so as to give no outward appearance of their existence and such occupations do not markedly increase traffic. She explained that their biggest concern as homeowners is the lake and its liability. She had spoken to the Associations insurance company which recommended the HOA raise its liability since the

people that will occupy the home are not actual homeowners by doing so the Association dues would have to be raised to cover the additional expense and she was advised by the insurance company there is a possibility the HOA will be dropped from coverage. The lake is 639 feet from the bottom of the driveway of the house the RRCSB has under contract. She felt it would only take a second for someone to disappear and drown in the lake. If that were to happen it would be devastating to everyone in the community. She explained that having a child with Down's Syndrome she is imminently aware of the danger of the lake, he never goes outside without supervision, the lake can be an attraction but it can be deadly the RRCSB says the home will have 24 hour supervision but she was aware of laws recently passed that state adults have a right to leave their group home unsupervised for a walk any time they need to. She stated she was already aware of several families that want the covenants dissolved if the protective covenants are not upheld and the group home comes in. If that were to happen the financial responsibility for the care of the lake would fall six families, 23 families current contributing to the fund, but if the HOA is dissolved four families would be responsible for maintaining the dam. She was not sure those involved could handle the additional financial burden especially were the dam is involved. It previously cost over \$5000 to fix the spillway and the spillway happens to be on her property and as an earthen dam it must be maintained at all times. She was sure the RRCSB had not thought of the consequences to the neighborhood if their purchase went through. She had spoken to her homeowner's insurance company and they advised her that if the HOA was dissolved to sell her portion of the lake or fill it in otherwise she should put much more personal liability coverage on her policy which would greatly increase her present rate and her family could not afford it. She stated subdivision does not have sidewalks and the road to the common area of the lake is gravel which is hard to walk on by those without limitations it is truly not suitable for those with physical limitations. Another concern she had was once the RRCSB was in they would ask the HOA to pay for modifications to make the road more accessible for their clients to get to the lake which would be another financial hardship on the current residents. She said the RRCSB said that would never happen, but the Titanic wasn't supposed to sink either. After reading through the RRCSB 2008-2010 strategic plan it made no reference to the need for a group home it discussed the construction of the Boxwood Recovery Center and the construction activities for a 6 bedroom group home in Locust Grove she did not find any reference to the need to purchase another group home in the RRCSB 2010 Fiscal Plan. She realized that need come up but the RRCSB should know from those who are on the waivers such as the MR waiver and the wait list that accompanies it what the needs are now and in the future and it should be included in their plan to obtain group homes as needed. The RRCSB and Mr. Duncan represent our community and the surrounding counties he has done an injustice to his clients and the counties he represents. They have had a contract on this home for weeks and not once had the HOA or neighboring homeowners been contacted by the RRCSB to state their intentions. This is not how you bring people with disabilities into a community there is so much anger with the way this was pushed through without notifying us, if Mr. Duncan was representing my son I would have been horrified at how this was handled. With the anger and all of us not wanting it out here how do you think the residents of the home will feel I believe Mr. Duncan has not taken into account the backlash that can happen to his clients and their feelings. She has seen group homes operated by licensed homes and state facilities there is a difference in the two, in state operated facilities the overall supervision health and welfare of the clients is often neglected, it is usually due to the lack of experienced health care providers they have to hire what is available to them at a given time it takes a very special person to care for this population. In closing she questioned if any of the Board members from RRCSB toured the home and realized the cost they were incurring to get it back into a suitable living condition. The carpets are stained molded and mildewed the home smells and has

stains on the walls, and there is water damage, the roof leaks, and the air conditioning does not work upstairs. The home is 22 years old, the windows cannot be opened because they are sealed shut, it only has 3 bedrooms and a drain field for four people. She asked what will it cost the taxpayers to have everything repaired. She then asserted the mold and mildew have to be removed especially for residents with depressed immune systems like her son. She had heard estimates up to \$100,000 and was not sure whether she or any other taxpayer would want their tax dollars going to repairs this house. In her opinion, there were nicer homes in foreclosure that would not require extensive repairs and she was certain there were homes available in neighborhoods without protective covenants. Finally Ms. Fry requested the RRCSB reconsider this home purchase.

Denise Hazelton, Salem District. Ms. Hazel stated she is also opposed to the RRCSB purchase. She did not believe the house or area would be safe for anyone with disabilities. She stated that in addition to no sidewalks and the pond that have been discussed, there are also three horse farms within the subdivision and she felt there was a danger of one of the clients wandering into a field and being kicked by a horse. She believed that everything about the subdivision was dangerous to someone with disabilities.

Charles Oliver, Salem District. Mr. Oliver stated both he and his wife Pamela were opposed to the group home. He wanted to address two things that had not been previously mentioned. In addition to the lake there is a pond and two swimming pools. He then told of a member of the Association who could not attend, is very afraid of almost anything and would not go into her own swimming pool recently when there someone on the loose that the police were looking for. She would not ever go into her swimming pool if this group home were allowed to exist. His concern was that the CSB was going to proceed regardless of what neighboring homeowners think.

Pamela Oliver, Salem District. Ms. Oliver stated she would not feel safe with the group home in her neighborhood.

Martin Abbene, Salem District. Mr. Abbene stated he was the largest land owner in the association. He has a horse farm at the end of the road and the earthen dam belongs mostly to him. He believed it would cost a fortune to replace the dam if the covenants were dissolved, and something happened. He expressed concern that if the covenants were dissolved only 4 or 5 families would have use of the lake because he and Mr. Hudson also own the recreation area and he felt that was not fair to the other residents of the community. He stated the HOA has a 2 million dollar liability plan now and he has a major horse farm and which he personally pays \$11,000 a year in insurance for. If the HOA was dissolved it would be major expense insurance wise. He expressed concern that this neighborhood was not a good place for a group home. He felt it was dangerous with the lake, docks, horses and donkeys it is just not the right place for this type of thing. He advised that he had spoken to Ed Scott and Bob McDonnell, about the CSB Board of Directors meeting in May at which they announced they were going to have prisoners for rehabilitation in this facility which they had received a \$250,000 grant for. He had also heard it would be an unstaffed facility and hasn't had any clarification of this and now he hears it's going to be a group home. He concluded saying first is Jail Diversion Reentry Grant Initiative shown in their minutes from May 12, 2009 and approved at that time now two months later it's a group home, He would like clarification on that.

Kenneth Pargeon, Salem District. Mr. Pargeon stated his objection to the RRCSB purchase

and found it too much of a liability for his family. He said he moved to this part of the county to get away from some of the things that are happening in town now and he was not comfortable with CSB to bringing the group home to this area. He felt CSB was putting people farther away from resources and facilities they need contact with.

Larry A. Horner, Salem District. Mr. Horner stated he is 100 percent opposed the RRCSB's purchase and felt it was a really bad idea. He said twenty years ago they had purchased their home with the intention of being there the rest of their lives now if this goes through he thinks he will have to move. He didn't want to have to do that. He felt the town had better resources for this type of home and he thought there must be better ideas such as building a facility that was better suited for the residents. He stated he doesn't have anything against the people that need that type of help but he thought it could be better thought out and better addressed before it was snuck out there and he believed he and his neighbors did feel snuck up on without any one communicating with the Association and they pay dues simply for that protection. He did not believe anyone in attendance would want this type of facility next door to them. He was aware the clients had special needs but he felt there were better avenues to address those needs.

Barbara Horner, Salem District. Ms. Horner stated she and her husband had lived in the community for twenty years and the home in question would literally be in their front yard. They are on the lake, all of their property encompasses the lake; there is no clear boundary between their property and access to the lake. She was not sure how it reached this point they have paid Association dues for twenty years she guessed she didn't understand the covenants it's not multi-dwelling homes. She felt the lake was one of the biggest hazards and CSB's purchase compromised their property values. She doubted whether any of the Board members would consider buying her home with CSB's facility located there, she was concerned about the noise and about one of the residents showing up on her front porch. She stated that she was sure the sheriff's department might as well plant a car in the neighborhood, because she planned on calling whenever there is an issue; if she feels afraid and finds someone wandering on to her property she is going to call the sheriff. In closing she forewarned the CSB that she would be the "neighbor from hell" if this purchase goes through.

Ed Gentry, Salem District. Mr. Gentry stated his lot is adjacent to the CSB lot on Conner Drive and he also has 200 yards of lakefront property. In addition to what had already been addressed he wanted to focus on the restrictive covenants that have applied to the property since 1987. They were there when he purchased his property in 1987. There are two covenants that are most important to him, the first is the limit to single family homes, and the other is the prohibition against subdividing lots and building another home and selling it. He described a covenant as a solemn agreement between one or more parties about something they feel very strongly about, something they want to protect, or something they want to preserve. The restrictive covenants help preserve the character of the subdivision. He felt the rural nature of their subdivision was why most of his neighbors moved there and stayed there. Giving the RRCSB the benefit of the doubt he assumed they did not know the covenants were there, concerning the single family homes when they contracted to buy the property, he asserted but they know it now. He understood that RRCSB has a definition from section 15 of the Code of Virginia that he stated was one of the most bizarre definitions of a single family home that he had ever heard. Mr. Gentry described that they can have ten representatives from different families in a single family home and that is a single family, he commented he did not know what the legislators were thinking when they came up with that definition but he felt it was an obvious contradiction in terms. He felt that the definition notwithstanding when CSB

takes title to the property they agree to abide by the covenants because it is a contract between all of the lot owners in the subdivision. What astounded him was that a taxpayer funded organization with knowledge of the covenants intended to go forward to buy the home and their first intention is to break one of the most important covenant contracts with all of the lot owners. He felt the RRCSB had a very serious legal problem. In 1984 in the case of Omega Corporation versus Malloy the Virginia Supreme Court heard this exact issue about whether a group home with mentally challenged disadvantaged people could be put in a subdivision that had a single home restriction covenant like the Village of Griffinsburgs'. In finding they could not do that, the Virginia Supreme Court upheld the covenant against the group home coming in. The Court said "we deal in this case with private contractual rights arising from restrictive covenants and not with provisions of zoning ordinances". Mr. Gentry suggested the parties apparently interpreted Chesterfield's zoning ordinance to permit group homes proposed by Omega, if this interpretation is correct the ordinance would support the public policy, but Chesterfield's zoning ordinance cannot relieve the lots in question, in this case, the Village of Griffinsburg from the restrictive covenants to which they are subject. He advised if there was anyone from RRCSB present, the Commission needed to do their homework not only from a moral and ethical stand point but from a legal one as well. When they buy property with a restrictive covenant they are agreeing to abide by it but the Virginia Supreme Court has said when there is a restrictive covenant you can't put a group home in a subdivision that is limited to single family homes. Mr. Gentry concluded saying, It makes good plain sense words mean something a single family home is a home with a single family.

Brian Kimble, Salem District. Stated his home is adjacent to Mr. Gentry's and is closest to the home in question, within 200 feet. He wanted to reiterate some of the safety concerns especially since he has small children. He purchased the lot in 1988 with the intention of raising his family there. One of the things that attracted him to the subdivision was the restrictive covenants, knowing his rights as a property owner were going to be protected. He had concerns about increased traffic with small children who ride bikes and play in the street. The neighborhood being as far out of town as it is, is not conducive to providing the services that the residents of the group home would need therefore he wanted to voice his objection to the group home being placed there.

With no other speakers from the audience Mr. Chase allowed Mr. Underwood as Salem District Representative three minutes to address his constituents.

Mr. Underwood expressed his appreciation to the speakers from the Salem District for outlining their concerns and opinions. In addition to all of the concerns raised which he shared, he stated he had a big problem with a government entity using tax dollars to buy property in violation of covenants as understood by all members of the community. He strongly urged the RRCSB to reconsider, if they did not then he disagreed with their decision making, he further disagreed with anyone who executes that policy. He strongly, as strongly as possible, encouraged CSB's reconsideration. He stated he fully supports the mission of the RRCSB, and believed they do good work. He absolutely appreciated what is happening with Boxwood which he felt is a great program and one which the Board of Supervisors helped out earlier that day by cutting the fees for water and sewer services. He would like to do anything possible, although he thought his neighbors would not like him volunteering his neighborhood, there are no restrictive covenants at his end of Reva Road and he felt that perhaps the group home would be more appropriate there than it would be at the Village of Griffinsburg. If the CSB Board was fully aware of all of these issues when they made their decision then he was

disappointed in their decision if they were not he felt sure they had enough information to reconsider their decision now.

With no further speakers Mr. Chase closed the public forum.

### **AGENDA ADDITIONS AND/OR DELETIONS**

Mr. Chase called for additions and/or deletions to the agenda.

Mr. Underwood moved, seconded by Mr. Nixon, to approve the agenda as presented.  
Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger

Motion carried 7 to 0.

### **PUBLIC HEARINGS**

#### **THE BOARD WILL RECEIVE PUBLIC COMMENTS AND CONSIDER TRANSFER OF A TWENTY ACRE PARCEL OF PROPERTY TO CHARLES K. GYORY AND PETER G. GYORY**

Mr. Chase introduced this item for public hearing and announced the property was originally donated by the Gyory's but the County couldn't do what was planned and the Gyory's would like it back. Mr. Chase then opened the public hearing.

There being no one wishing to address the Board, the public hearing was closed.

Following brief discussion, Mr. Nixon moved, Mr. Aylor seconded, approval of the return of the twenty acre parcel to Charles K. Gyory and Peter G. Gyory.

Mr. Walker thanked the Gyory's for donating the property originally.

Mr. Underwood wanted to clarify that the County was not giving away land. He explained the land had been donated by the Gyory's specifically for water and sewer use but the plans for that area have changed and no longer call for water and sewer facilities. He concluded that it definitely made sense to return the property.

Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger.

Motion carried 7 to 0.

#### **THE BOARD WILL RECEIVE PUBLIC COMMENTS AND CONSIDER AN ORDINANCE TO APPROVE OR DENY, IN WHOLE OR IN PART, CERTAIN APPLICATIONS FOR EXEMPTION FROM REAL AND PERSONAL PROPERTY TAXES PURSUANT TO THE COUNTY CODE SECTIONS 12-175 TO 181**

Mr. Thorpe stated the public hearing was to consider three applications that formed the proposed ordinance. The first application for tax exemption was for the Brandy Station Foundation which owns a total of 43.66 acres; they are a tax exempt organization and own the



property for the purpose of preserving Civil War facilities. The second application was from the Virginia Regional Transit organization, which is supported by units of local government, they had recently acquired a 5 acre parcel of real estate that they intend to develop for their use in Culpeper. The third application was from the National Capital Squadron which had been previously approved for real estate tax exemption and was then applying to have their 1985 Chevrolet SUV exempt. Mr. Thorpe recommended approval of all three applications.

Mr. Nixon asked Mr. Thorpe if his recommendation had changed since this topic had originally been presented during the morning Board meeting. Mr. Thorpe replied no, that what he had mentioned in the morning session was that there was a concern about the Brandy Station Foundation because previously another organization had previously submitted a similar application involving nearly 1000 acres of Civil War battlefield land but in 2007 instead of being granted tax exemption it was placed in Land Use. The question that had come up was does the precedent that was followed on the previous application point the way to address the Brandy Station Foundation and it's 43 acres, certainly there is a difference in the amount of acreage also there is a difference in the assessed value. He had advised the Brandy Station Foundation of the issue and was obligated to report it to the Board as well and that is what he had done in the morning session in order to have full disclosure.

Mr. Chase opened the public hearing.

Mr. Bob Jones, President of the Brandy Station Foundation, thanked Mr. Thorpe for his recommendation and for bringing up the issue of the past application. He advised the Board that he would like to give some clarification to that issue. He stated the request from the Civil War Preservation Trust in 2002 to exempt their land came from an organization that is a national 501C3 special interest group and yes they do preserve land in the county and across the country. After they purchased the land here it was turned over to a local farmer to use for agricultural purposes. There are some trails on the land but there is no active stewardship and that is the difference between them and the Brandy Station Foundation. The property owned by the Brandy Station Foundation is maintained by the Foundation, has trails and signage. He reported that the Foundation had received a grant from the Virginia Department of Transportation to upgrade the parking lot on the Fleetwood Hill site. In June they had a joint church service at the St. James church site with the Christ Episcopal Church from Brandy Station as a memorial to the soldiers of both sides during the war. He reported that on a monthly basis they have a lecture series, and every other week they host driving tours of the battlefield. Any relief they receive from financial obligations such as taxes is put back into the county in the form of programs that they do or run. He was pleased to announce they had just entered into a loan agreement with an organization in the state of New York, a small museum in Neversink Valley, which had a handmade flag a lady had made for her son who fought with the 124<sup>th</sup> New York Regiment at the Battle of Brandy Station and carried that flag. They now have the loan of that flag for several months and hope to have it back for further display for the sesquicentennial. He felt the Brandy Station Foundation could make a better case than the Civil War Preservation Trust for tax exemption.

Mr. Chase asked if all of the Brandy Station Foundation staff were volunteers Mr. Jones replied yes. He added there are no paid positions in the Brandy Station Foundation and yes some of the positions with the Civil War Preservation Trust were funded and paid, but it was an excellent organization and he did not want to diminish their efforts.

Ms. Mary Glafholden, General Counsel for Virginia Regional Transit, Cathy Fennith,

CEO, and Greg McGowen Transit Manager invited the Board Members to visit their facility and offered to answer any questions the Board Members had.

There being no one else wishing to address the Board, the public hearing was closed.

Mr. Nixon expressed concern over distinguishing between the Brandy Station Foundation and the Civil War Preservation Trust when they were both providing basically the same services by preserving Battlefield land, maintaining trails and posting signs. He stated he was not against one or the other but he did not understand how the Board could draw a distinction between the two.

Mr. Chase commented he did not have that problem, he thought there was a great distinction between the two.

Mr. Underwood agreed with Mr. Nixon that it made sense to draw a distinction if possible. He believed there was a distinction. One organization was completely volunteer and active within the community with a significant presence that works to inform the community of the history and involves the community with the land with the primary goal of education. The Civil War Preservation Trust does a wonderful job of preserving the land but they then leases out the land for agricultural use and take advantage of Land Use taxation, which is absolutely appropriate. The Brandy Station Foundation being an organization that functions with a mission of using the land to further the public's awareness and having volunteers with active events along those lines was a distinction to him therefore he thought it was worthwhile to approve it. Mr. Underwood also commented on the 1984 Chevrolet saying the amount that was being exempted was much less than the amount it cost the county to exempt it. He noted that the amount that was being exempted was less than twenty dollars but the packets for the committees were 100 pages for every member of the committee for just that one item. He would like to come up with a better process because it did not make sense to spend more money than what was being exempted.

Mr. Thorpe replied that was why the proposed ordinance stated "and replacements" so that each time the vehicle is replaced the Board does not need to go through the approval process again.

Mr. Nixon commented that the point he was trying to make is he felt at some point the Board would face a legal challenge if they exempted one without exempting the other and he thought the Board should be aware of that.

Mr. Thorpe mentioned that based on the records he had checked the Civil War Preservation Trust had not reapplied for further consideration for tax exemption. If the Brandy Station Foundation was approved the Board would be setting a precedent that if there is a active operation to bring the public in and support the civil war battlefields and other areas as opposed to a passive operation. Should the Trust subsequently develop a more active operation then maybe they should be reconsidered if they reapply but right now he felt the Board could draw a distinction.

Mr. Chase commented that he hated the term precedent. He asserted that every case the Board hears is separate, otherwise the Supervisors would not be needed, someone could just look in a rule book to find the answer. It was not the precedent he was worried about. He asked how could 1000 acres of fields be compared to a wooden house with drawings on the

walls, he exclaimed there is no comparison, so there is no precedent. In one case it was a total volunteer organization in the other case it was a totally paid organization. He did not see a comparison he thought they were totally separate.

Mr. Underwood moved, Ms. Hansohn seconded, that the Board approve the resolution authorizing approval of the three tax exemption applications.

Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger.

Motion carried 7 to 0.

**THE BOARD WILL RECEIVE PUBLIC COMMENTS ON A PROPOSED RESOLUTION  
SETTING A SEPARATE PERSONAL PROPERTY TAX RATE FOR MOTOR VEHICLES  
WITH A SEATING CAPACITY OF NOT LESS THAN 30 PERSONS**

Mr. Bossio introduced this item for public hearing and reported that in the last legislative session House bill 2524 Chapter 40 amended the Code of Virginia and created a separate classification for local property tax purposes for motor vehicles with a seating capacity of at least 30 persons including the driver. Vehicles in the new classification can be taxed at a tax rate not to exceed the general rate imposed on the tangible personal property. He explained that what was before the Board is a resolution to adopt that change and set the tax rate from \$3.50 to \$1.00. Mr. Bossio stated the Commissioner of the Revenue's office reported there were 3 units that meet the description with a combined assessed value of \$402,367. He reported the revenue based on a \$3.50 tax rate was \$14,082 and based on a \$1.00 tax rate approximately \$4,023. The effective date was January 1, 2009.

Mr. Chase then opened the public hearing.

Mr. David Messick, Salem District. Mr. Messick thanked the Board for their consideration of this issue and added there were three coaches in the Salem District all of which are single owner/operators. He advised that the economy had hit them all hard. He explained that he would only be in operation 150 days this year and even in a good year 200 days is good so even though the value is higher they are different than tractor trailers because they are specialized with a very small season. He stated that Fauquier County had already acted on this change.

Mr. Chase commented that it was a key point that Mr. Messick had kept his motor coach out of the county for so many years. Mr. Messick replied that it was something that he never wanted to do, but the \$3.50 per hundred tax rate equaled a \$13,000 tax bill and he could not operate that way.

With no one else wishing to address the Board, the public hearing was closed.

Mr. Aylor moved, Mr. Nixon seconded, that the Board approve the resolution authorizing creation of a new local tax classification for motor vehicles with a seating capacity of at least 30 persons and a tax rate of \$1.00.

Mr. Underwood commented that the revenue estimates were static scoring meaning

that would be the revenue if Mr. Messick actually kept his vehicle in the county and paid that which he did not do in the past and probably would not in the future. Mr. Underwood felt this action was revenue enhancing.

Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger.

Motion carried 7 to 0.

### **NEW PLANNING COMMISSION BUSINESS – PUBLIC HEARING**

#### **WITHDRAWAL FROM THE STEVENSBURG AGRICULTURAL AND FORESTAL DISTRICT**

Request by Earl S. Hawkins Family LLC to withdraw two parcels containing 654.4 acres from the Stevensburg Agricultural and Forestal District. The property is located on route 663 in the Stevensburg Magisterial District. Tax Map/Parcel Nos. 53/66 and 65/21.

Mr. McLearen presented the case for public hearing. He noted the Planning Commission considered the case after the proper advertising and public hearing on August 12, 2009. The Agricultural and Forestal District Advisory Committee recommended to the Planning Commission that the application for withdrawal be approved, based on the following consideration, that the applicant wishes to subdivide the property in order to create two new parcels for family members to build homes upon and the remainder will be placed back into the Agricultural and Forestal District. The Planning Commission concurred with this recommendation and recommends to the Board that this withdrawal be approved.

Mr. Eggertson reported that Mr. Hawkins intent is to create two ten acre lots to build one house for himself and one for his daughter he then intends to put the balance of the property back into the District and it is recommended for approval.

Mr. Chase commented that he had spoken with Mr. Hawkins who has every intention of placing the property back into the Agricultural and Forestal District. Mr. Chase then opened the public hearing.

With no one else wishing to address the Board, the public hearing was closed.

Mr. Chase announced that he would be answering any questions on behalf of Mr. Hawkins who could not attend.

Mr. Walker asked if this was the best way to set the process up in order to subdivide for two houses, by taking it out and then putting it right back in. Mr. Chase responded by law that is the only way it can be done.

Mr. Nixon moved, Mr. Walker seconded, approval of the request by Earl S. Hawkins Family LLC to withdraw two parcels containing 654.4 acres from the Stevensburg Agricultural and Forestal District. The property is located on route 663 in the Stevensburg Magisterial District. Tax Map/Parcel Nos. 53/66 and 65/21.

Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger

Motion carried 7 to 0.

**CASE NO. Z-426-08-1.** Request by Armstrong, Green and Embrey, Inc. d/b/a Remington Mulch to rezone 9.5 acres from A-1 (Agricultural) to HI (Heavy Industrial). The Culpeper County Comprehensive Plan designates this area as Rural. The property is located off Route 615 in the Cedar Mountain Magisterial District. Tax Map/Parcel No. 75/33.

Mr. McLearen presented the case for public hearing. He noted the Planning Commission considered the case after the proper advertising and public hearing on July 8, 2009. The Planning Commission found the proposed rezoning request consistent with the County Comprehensive Plan with the exception of the proffers. The Planning Commission recommended approval of the rezoning request with proffers.

Mr. Eggertson displayed a tax map highlighting the subject property location. Mr. Eggertson informed the Board that the request by Remington Mulch was to bring their operation into compliance on the portion of the property zoned agricultural. He advised that the proposal came before the Planning Commission and stayed at that level for several months because there had been some issues at the site. He detailed the primary problem had been with dust emissions that had been difficult for one of the adjoining property owners and the extent of the problem was significant enough that the DEQ is involved in seeking compliance. The staff's position on the request has been that the rezoning of the property would help the situation because the dust problem is occurring on the existing industrially zoned land which is compliant with zoning and the additional area to be rezoned would allow some of the operation causing dust to move further away from the affect residence. During the course of the consideration of the case the Planning Commission work with the applicant and the result was the proffers each Board Member received their agenda packet. He summarized some of the action that had taken place; a fence was constructed along the property line between the subject parcel and parcel 80B, there was a limitation placed on all finished mulch piles so they can be no more than 25 feet wide by 15 feet high. The grinding taking place on the property has been moved further back to a location which is at least 200 feet from the most impacted adjacent residence which is located on parcel 78. Additionally during the summer months a water truck has been utilized to minimize the dust at the property. Finally the DEQ performed multiple inspections as have members of County staff and found the property to be in compliance. In addition to those points there are also additional requirements of the proffers, a landscape berm along the property line of tax map parcel 80B is required to be constructed and has to be completed by September 30<sup>th</sup> of this year and has to be landscaped by November 30<sup>th</sup> 2009. The mulch pile height limits of 15 feet high and the no grind buffer zone that are already in place are part of the proffers and must be maintained which add to the protection of parcel 78 where the most impacted residence is located. There is a letter of agreement between the applicant and DEQ and all of the items in that letter which amount to a consent order are proffered as part of the rezoning and the key element to the proffers is an irrigation system must be installed by September 30, 2009 which will also help with the dust emission problem. Mr. Eggertson believed at that time approval of the rezoning request would benefit everyone involved, the proffers would be tied to the property and be enforceable where the existing zoning would force more of the operations on to the existing zoned parcel and closer to the residences.

Mr. Chase asked if the applicant wanted to add anything.

Mr. Butch Davies present on behalf of the applicant agreed that staff stated accurately what had occurred and offered to answer any questions.

Mr. Underwood asked if there were any proffers regarding future use of the property.

Mr. Davies replied no but some uses had been limited in the rezoning, things were taken out that it could not be used for that were felt could be adverse.

Mr. Nixon said there was nothing about maintenance of the berm and trees and asked Mr. Eggertson if the trees should die who would replace them.

Mr. Eggertson replied that proffer 3.3 indicates that all of the plantings in the proffers have to be maintained in such a manner to ensure their viability. Any plating which dies will be replace within sixty days or as soon as weather soil and other practical conditions reasonably permit.

Mr. Chase opened the public hearing.

With no one wishing to address the Board, the public hearing was closed.

Mr. Aylor moved, Mr. Hansohn seconded, approval of Case Z-426-08-1 as presented.

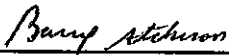
Mr. Chase called for voice vote.


Ayes – Aylor, Chase, Hansohn, Nixon, Underwood, Walker, Rosenberger.

Motion carried 7 to 0.

### **ADJOURNMENT**

Mrs. Hansohn moved to adjourn the meeting at 8:16 p.m.

  
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Barry A. Atchison,  
Assistant to the Deputy Clerk

  
\_\_\_\_\_  
William C. Chase, Jr., Chairman

ATTEST:

  
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Frank T. Bossio, Clerk to the Board